

COLONEL JOHN OWEN  
JOE HOLCOMBE vs UNITED STATES OF AMERICA

December 18, 2019

1

1 IN THE UNITED STATES DISTRICT FOR  
2 THE WESTERN DISTRICT OF TEXAS  
3 SAN ANTONIO DIVISION

4 JOE HOLCOMBE, et al., :  
5 :  
6 Plaintiffs, :  
7 :  
8 v. :No:  
9 :5:18-CV-00555-XR  
10 UNITED STATES OF :  
11 AMERICA, :  
12 :  
13 Defendant. :  
14

11 VIDEOTAPED DEPOSITION OF  
12 COLONEL JOHN OWEN

13  
14 Wednesday, December 18, 2019  
15 10:54 a.m.

16  
17 United States Attorney's Office  
18 United States Department of Justice  
19 175 N Street, Northeast  
20 Three Constitution Square  
21 Washington, D.C.  
22

20 Noojan Ettehad, Videographer  
21 Terry L. Bradley, Court Reporter  
22

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1 COLONEL JOHN OWEN,  
2 having been first duly sworn, testified as  
3 follows:  
4

5 EXAMINATION

6 BY MR. JACOB:

7 Q. Could you state your name for us,  
8 please?

9 A. John Owen.

10 Q. And what is your occupation?

11 A. I'm an attorney, a JAG, with the  
12 United States Air Force.

13 Q. And could you give us your title.

14 A. I'm the chief of the Military  
15 Justice Division.

16 Q. Um, and how long have you been the  
17 Chief of the Military Justice Division?

18 A. Since August of 2019.

19 Q. Okay. And have you ever given a  
20 deposition before?

21 A. I have not.

22 Q. Okay. So this is first time. Have

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1 A. Yes.

2 Q. And do you understand that you --

3 -- that you are obligated to testify

4 on all information known or reasonably

5 available to the United States concerning the

6 topics you've been designated for?

7 A. Yes.

8 Q. Do you have the full authority to

9 speak on behalf of the Government concerning

10 those topics?

11 A. I do.

12 Q. How did the United States prepare

13 you to testify on behalf of the United States

14 on those topics?

15 A. We --

16 MS. KRIEGER: Objection.

17 Attorney-client privilege.

18 MR. JACOB: Are you instructing him

19 not to answer?

20 MS. KRIEGER: Can you restate the

21 question.

22 BY MR. JACOB:

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1 thing. I have seen this provision. I did not  
2 realize that this was in this document. But I  
3 have seen this paragraph previously.

4 Q. Okay. So --

5 And by paragraph, are you referring  
6 to Paragraph 9 of Page 10 of Exhibit 1?

7 A. That's correct.

8 Q. Okay. And I'll represent to you  
9 that the United States has designated you as a  
10 witness who can testify under Federal Rules  
11 Civil Procedure 30(b)(6) on Topic 9 of Page 10  
12 of Exhibit 1. Would you agree that's true?

13 A. Yes.

14 Q. Do you have full authority to talk  
15 on behalf of the United States concerning Topic  
16 9 of Exhibit 1?

17 A. I do.

18 (Exhibit 5 marked for  
19 identification.)

20 Q. Mark as Exhibit 5, and hand you a  
21 document that's been marked as Exhibit 5, and  
22 let me know when you've had a chance to look at

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1 Out of scope.

2 THE WITNESS: Security Forces.

3 That's correct.

4 BY MR. JACOB:

5 Q. Okay. Um, and what this policy is  
6 saying is that the Security Forces at no point  
7 later --

8 -- earlier than a subject interview  
9 should coordinate with the servicing SJA or  
10 legal advisor on --

11 -- on submitting these fingerprint  
12 cards after probable cause has been determined,  
13 correct?

14 MS. KRIEGER: Objection. Form.

15 THE WITNESS: That is correct.

16 BY MR. JACOB:

17 Q. Okay. So and I think we'll see this  
18 theme as we look through these policies, but  
19 the Air Force Instruction is putting the  
20 obligation on the Field Agents to come to the  
21 Judge Advocates to coordinate on probable  
22 cause, fair?

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1 A. That is fair.

2 Q. Um, and of course the Judge

3 Advocates have the obligation to be available

4 to the Field Agents to make such coordinations,

5 true?

6 A. True.

7 Q. And we also see that if you look on

8 Page USA 10300, under Paragraph 9.2.4.1.

9 A. 9.2.4.1. I see it.

10 Q. And the second sentence of that

11 paragraph reads: SF -- Security Forces -- must

12 consult with the SJA prior to making a probable

13 cause determination, correct?

14 A. That is correct.

15 Q. Now are you familiar with Air Force

16 regulations that impose obligations on Field

17 Agents to consult with Judge Advocates in

18 making probable cause determinations?

19 A. I know that they exist, but that's

20 not really my practice area, so I wouldn't be

21 an expert in those particular AFIs.

22 Q. Sure. Let me show you another AFI.

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1 with "It is imperative"?

2 A. I think so. Does it follow  
3 Attachment 8?

4 Q. Yes, it does.

5 A. Yes.

6 Q. Okay. So that sentence reads: It  
7 is imperative that Units coordinate with the  
8 SJA, and as appropriate civilian prosecutorial  
9 authority, as soon as possible to determine  
10 probable cause for the submission of  
11 fingerprints to the FBI.

12 Did I read that correctly?

13 A. You did.

14 Q. So what this Instruction Manual  
15 71-121 is doing is imposing an obligation on  
16 the Field Agents, the Units, to coordinate with  
17 the Staff Judge Advocate to determine probable  
18 cause as soon as possible before the submission  
19 of fingerprints to the FBI, correct?

20 A. That is correct.

21 Q. And again, what we see is the  
22 obligation to coordinate, to make the first

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1 step, to reach out, is on the individual AFOSI

2 Agents, right?

3 A. Yes.

4 Q. And that's the same thing that we

5 saw with regard to the Security Forces Agents.

6 They have the obligation to reach out to the

7 Judge Advocates, right?

8 A. Yes.

9 Q. Um, are you aware of any checklist  
10 or other policies that ensure that such  
11 coordination occurs?

12 A. I am not aware of any checklists in  
13 the Judge Advocate realm. No.

14 Q. Um, can you tell me why Air Force  
15 policy would require AFOSI Agents or Security  
16 Forces Agents to coordinate with the Judge  
17 Advocates before making probable cause  
18 determinations and submitting fingerprints to  
19 the FBI?

20 MS. KRIEGER: Objection. Out of  
21 scope.

22 THE WITNESS: I would imagine that



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1 higher and require more obligations on the  
2 Units to coordinate with the Judge Advocates,  
3 fair?

4 A. That is fair.

5 Q. Um, would it be fair to say that one  
6 reason that you might want Units to coordinate  
7 on probable cause determinations with the Judge  
8 Advocates is because the Judge Advocates are  
9 lawyers?

10 A. That would be fair.

11 Q. They have extensive knowledge  
12 concerning probable cause through their  
13 training in law school presumably, right?

14 A. Also fair.

15 Q. Um, and more likely than not Agents  
16 are not going to be lawyers, right?

17 A. Most likely not.

18 Q. Um, so would it be --

19 It's not inconceivable that in that  
20 coordination that the Judge Advocate might pick  
21 up on probable cause issues that the Agents  
22 might miss, fair?

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1 A. It is possible.

2 Q. It's likewise, Judge Advocates --

3 An Agent might come to a Judge

4 Advocate and say: You know, I think there's

5 probable cause here for submission.

6 And the Judge Advocate, with their

7 knowledge of the law, might tell the Agent:

8 You know, I don't think there's probable cause

9 here, and here's why.

10 True?

11 A. True.

12 Q. Um, so it could go either way,

13 right?

14 A. It could.

15 Q. And Judge Advocates are also aware

16 of other laws, such as the Brady Bill and the

17 Lautenberg Amendment, true?

18 A. True.

19 Q. So when Agents are consulting with

20 Judge Advocates on their cases, Judge Advocates

21 would be able to identify when requirements of

22 those laws are not being met by Agents, fair?

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1 MS. KRIEGER: Objection. Out of  
2 scope.

3 THE WITNESS: The attorney would be  
4 able to add that perspective. Yes.

5 BY MR. JACOB:

6 Q. Would it be fair --

7 And let me ask you this: How  
8 familiar are you with the Brady Bill and the  
9 Lautenberg Amendment?

10 MS. KRIEGER: Objection. Out of  
11 scope.

12 THE WITNESS: I'm fairly familiar.

13 BY MR. JACOB:

14 Q. And how are you fairly familiar?

15 A. In the scope of my duties over the  
16 last several years there have been occasions  
17 when the Air Force has called greater attention  
18 to certain laws; one of them was the Lautenberg  
19 Amendment. And in becoming familiar with the  
20 Lautenberg Amendment, you necessarily become  
21 familiar with the Brady Bill. Brady Act.

22 Q. You understand that those laws

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1 require the submission of certain criminal  
2 history data to the FBI for inclusion into the  
3 NICS background search system, true?

4 MS. KRIEGER: Objection. Out of  
5 scope.

6 THE WITNESS: I am familiar with  
7 those requirements.

8 BY MR. JACOB:

9 Q. Um, would it be --

10 Would you agree with me that in  
11 order for the NICS to keep guns out of the  
12 hands of felons, DOD, its components, including  
13 the Air Force, must submit, collect and submit  
14 criminal history data?

15 MS. KRIEGER: Objection. Out of  
16 scope.

17 THE WITNESS: Could you repeat the  
18 question.

19 BY MR. JACOB:

20 Q. Sure. In order for the FBI's NICS  
21 system to keep guns out of the hands of  
22 dangerous felons, child abusers, DOD, its

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1 components, such as the Air Force, should  
2 collect and submit criminal history data to the  
3 FBI?

4 MS. KRIEGER: Same objection.

5 THE WITNESS: The Air Force should.  
6 Yes.

7 BY MR. JACOB:

8 Q. Um, would you agree that the more  
9 information that the FBI has on dangerous  
10 felons and child abusers, the better decisions  
11 they can make in preventing those types of  
12 individuals from getting firearms that they  
13 shouldn't have access to?

14 MS. KRIEGER: Objection. Out of  
15 scope.

16 THE WITNESS: I would assume that  
17 that would be true. Yes.

18 BY MR. JACOB:

19 Q. Would you agree that when Government  
20 Agencies fail to share data on dangerous felons  
21 and child abusers, that they unnecessarily  
22 expose the public to a risk of gun violence?

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1 THE WITNESS: I suppose they could,  
2 but I can't think of a situation when they  
3 would unless they were asked specifically by an  
4 OSI Agent JAG: Do you think there's probable  
5 cause here to submit fingerprints?

6 BY MR. JACOB:

7 Q. And OSI Agents are supposed to be  
8 asking Judge Advocates about the probable cause  
9 determination, correct?

10 A. They are.

11 Q. And so when they ask about the  
12 probable cause determination, should the Judge  
13 Advocate recognize this as an issue they can --  
14 -- they can respond: Yes. Have you  
15 submitted the fingerprints?

16 MS. KRIEGER: Objection. Form.

17 THE WITNESS: They could. But  
18 again, because that's not a function that we  
19 track or are responsible for, I can't conceive  
20 when they would actually ask that. The Judge  
21 Advocate's going to be intent on perfecting the  
22 case, not making sure that these administrative

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1 MR. JACOB: So --

2 THE WITNESS: If I might, I'd just  
3 like --

4 MR. JACOB: Yeah.

5 THE WITNESS: -- to correct my prior  
6 answer. I am familiar with that information.

7 MR. JACOB: Uh-huh.

8 THE WITNESS: But when you asked me  
9 if I was familiar with that particular  
10 paragraph, what was in that paragraph, my  
11 answer is "no". But I am familiar with that  
12 information.

13 BY MR. JACOB:

14 Q. Sure. So you understand then that  
15 the DOD created DIBRS, designed DIBRS to meet,  
16 at least partially meet, the reporting  
17 requirements of the Brady Handgun Violence  
18 Prevention Act of 1994?

19 MS. KRIEGER: Objection. Out of  
20 scope. Asked and answered.

21 THE WITNESS: That is my  
22 understanding.

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1 BY MR. JACOB:

2 Q. Next sentence says: The JA -- Judge  
3 Advocate -- is responsible for the results of  
4 trial segment.

5 Did I read that correctly?

6 MS. KRIEGER: Objection. Out of  
7 scope.

8 THE WITNESS: You did.

9 BY MR. JACOB:

10 Q. And what that instruction, the  
11 mandatory instruction, is saying, is that the  
12 Judge Advocate who's responsible for the case  
13 is responsible for submitting the results of  
14 trial segment to DIBRS, correct?

15 MS. KRIEGER: Objection. Out of  
16 scope.

17 THE WITNESS: We are responsible for  
18 reporting a result of trial segment that would  
19 be relevant to DIBRS. Yes.

20 BY MR. JACOB:

21 Q. And I understand that Staff Judge  
22 Advocates and Judge Advocates are literally not



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1 the probable cause determination before  
2 submitting fingerprints.

3 So starting over. Are you aware of  
4 any training that Judge Advocates are given by  
5 the Air Force in their supervisory role or in  
6 their individual role concerning the probable  
7 cause determination that is made in conjunction  
8 with an Agent before submitting fingerprints to  
9 the FBI?

10 A. Not in specific regard to submission  
11 of fingerprints, no.

12 Q. Okay. Would you agree --

13 And we've covered multiple mandatory  
14 instructions today. Correct?

15 A. Correct.

16 Q. Would you agree that when the Air  
17 Force issues mandatory instructions, such as  
18 the ones that we've covered, they have an  
19 obligation to train the individuals those  
20 instructions apply to on the substance of those  
21 instructions?

22 A. Yes.

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1 for you.

2 BY MS. KRIEGER:

3 Q. Let me repeat. So we are on  
4 Exhibit 8, Bates stamp Page 11967.

5 A. Yes.

6 Q. And this is the Document 6 June.  
7 AFI 51-201 from 6 June 2013. Is that right?

8 A. Yes.

9 Q. So let's look at the paragraph  
10 numbered 12.7.4.1, the second to last sentence.  
11 That says: The data for this segment was  
12 gathered through the use of AMJAMS and most of  
13 it is already entered by a paralegal.

14 Is that right?

15 A. That's correct.

16 Q. Does anyone from the JA office

17 submit --

18 Do paralegals from the JA office

19 submit information directly to DIBRS?

20 A. No.

21 Q. Does anyone from the JA office

22 submit information directly to DIBRS?

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1           A.       No.

2           Q.       Let's turn to just very briefly to  
3 Exhibit 6, which is the Bates stamp USA 10257.

4           A.       All right.

5           Q.       What's the date on this document?

6           A.       Air Force Instruction. This is a 5  
7 March 2014 document incorporating Change 1,  
8 dated 2 December 2015.

9           Q.       So would this document have been in  
10 effect between 2011 and 2013?

11          A.       No, it would not.

12          Q.       And then just to go back way  
13 earlier, Mr. Jacob was asking you about final  
14 disposition reports. Do you understand the  
15 final disposition report to mean the R-84  
16 document that is submitted to the FBI?

17          A.       No.

18          Q.       What do you understand the final  
19 disposition report to mean?

20          A.       The result of report of trial  
21 memorandum or the court Martial order.

22          Q.       And are either of those documents

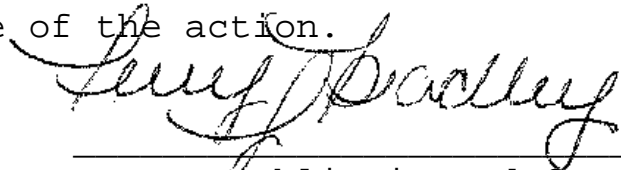
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CERTIFICATE OF NOTARY PUBLIC

I, Terry L. Bradley, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me in shorthand and thereafter reduced to computerized transcription under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

  
\_\_\_\_\_  
Notary Public in and for  
the District of Columbia

My Commission expires: April 30, 2022

IN THE UNITED STATES DISTRICT FOR  
THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

JOE HOLCOMBE, et. al,	§	NO. 5:18-CV-00555-XR
	§	
Plaintiffs	§	Consolidated with:
	§	5:18-cv-00712-XR ( <i>Vidal</i> )
	§	5:18-cv-00881-XR ( <i>Uhl</i> )
vs.	§	5:18-cv-00944-XR ( <i>Ramsey</i> )
	§	5:18-cv-00949-XR ( <i>McNulty</i> )
UNITED STATES OF	§	5:18-cv-00951-XR ( <i>Wall</i> )
AMERICA,	§	5:18-cv-01151-XR ( <i>Amador</i> )
	§	5:19-cv-00184-XR ( <i>Brown</i> )
Defendant	§	5:19-cv-00289-XR ( <i>Ward</i> )
	§	5:19-cv-00506-XR ( <i>Workman</i> )
	§	5:19-cv-00678-XR ( <i>Colbath</i> )
	§	5:19-cv-00691-XR ( <i>Braden</i> )
	§	5:19-cv-00706-XR ( <i>Lookingbill</i> )
	§	5:19-cv-00714-XR ( <i>Solis</i> )
	§	5:19-cv-00715-XR ( <i>McKenzie</i> )
	§	5:19-cv-00805-XR ( <i>Curnow</i> )
	§	5:19-cv-00806-XR ( <i>Macias</i> )

NOTICE OF DEPOSITION

To: Defendant, United States of America, by and through  
its attorney, Paul Stern, United States Department of  
Justice, Three Constitution Square, 175 N Street,  
N.E., Washington, DC 20002.

From: Plaintiffs, Vidal, et. al, 5:18-cv-712-XR, McNulty, et.  
al, 5:18-cv-00949-XR; Wall, et. al, 5:18-cv-00951-XR;  
Solis, et. al, 5:19-cv-00714-XR, and McKenzie, 5:19-cv-  
00715-XR.

Owen  
1

Please take notice that under Fed. R. Civ. P. 30(b)(6), the above Plaintiffs will take the deposition of the Defendant, United States of America, by oral examination using video, audio, and stenographic means, at the following location and date:

Date: September 12, 2019

Location: United States Attorney's Office  
601 NW Loop 410, Ste. 600  
San Antonio, Texas 78216

Time: 9:00 AM CST

Court Reporter: Res Ipsa or designee

Videographer: Res Ipsa or designee

The deposition will continue from day to day until completed, with such breaks, as necessary. Pursuant to Rule 30(b)(6), the United States of America shall designate one or more officers, directors, managing agents, or other persons who consent and are knowledgeable to testify on the United States' behalf with respect to the subject matters set forth in attached Exhibit A. A request to produce documents permitted under Rule 30(b)(2) is attached as Exhibit B.

### DEFINITIONS

Please see applicable definitions in W.D. Tex. Local Rule CV-26(b)(1)–(7). The singular form of any word shall include within its meaning the plural form of the word and vice versa. For your convenience, Plaintiffs have duplicated those definitions here:

**Communication.** The term “communication” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

**Document.** The term “document” is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a). A draft of a nonidentical copy is a separate document within the meaning of this term.

**Identify (With Respect to Persons).** When referring to a person, to “identify” means to give, to the extent known, the person’s full name, present or last known address, e-mail address, and telephone number, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

**Identify (With Respect to Documents).** When referring to documents, “to identify” means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s), and recipient(s).

**Parties.** The terms “plaintiff” and “defendant” as well as a party’s full or abbreviated name or pronoun referring to a party mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

**Person.** The term “person” is defined as any natural person or business, legal or governmental entity or association.

**Concerning.** The term “concerning” means relating to, referring to, describing, evidencing or constituting.



## ACRONYMS

The following acronyms apply to this notice:

ACRONYM	MEANING
AFOSI	Air Force Office of Special Investigations
CJIS	Criminal Justice Information Services
DIBRS	Defense Incident-Based Reporting System
DMDC	Defense Manpower Data Center
DoD	Department of Defense
DODIG	Department of Defense Inspector General
I2MS	Investigative Information Management System
IAFIS	Integrated Automated Fingerprint Identification System
NCIC	National Crime Information Center
NGI	Next Generation Identification
NIBRS	National Incident-Based Reporting System
NICS	National Instant Criminal Background Check System
USAF	United States Department of Air Force

Respectfully Submitted,

/s/ Jason P. Steed

**Jason P. Steed**

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Texas Bar No. 24070671

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LLP**

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Dallas, TX 75201

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Counsel for Vidal, McNulty, and  
Wall

/s/ Jamal K. Alsaffar

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**Whitehurst, Harkness, Brees,  
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& Jacob PLLC**

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Austin, TX 78735

Office 512-476-4346

Fax 512-476-4400

Counsel for Vidal, McNulty,  
McKenzie, Solis, Ramirez  
and Wall

## CERTIFICATE OF SERVICE

By our signatures above, we certify that a copy of this pleading, Notice of Deposition, has been sent to the following on August 22, 2019 via email and certified mail, return receipt requested.

JOSEPH H. HUNT  
Assistant Attorney General  
United States Dept. of Justice  
Civil Division

JOHN PANISZCZYN  
Civil Chief  
United States Attorney's Office  
Western District of Texas

JOHN F. BASH  
United States Attorney  
Western District of Texas

JAMES G. TOUHEY, JR.  
Director, Torts Branch  
United States Dept. of Justice  
Civil Division

KIRSTEN WILKERSON  
Assistant Director, Torts Branch  
United States Dept. of Justice  
Civil Division

STEPHEN E. HANDLER  
Senior Trial Counsel, Torts Branch  
United States Dept. of Justice  
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PAUL DAVID STERN  
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United States Dept. of Justice  
Civil Division  
CLAYTON R. DIEDRICHS  
Assistant United States Attorney

STEPHEN TERRELL  
Trial Attorney, Torts Branch  
United States Dept. of Justice  
Civil Division  
JAMES E. DINGIVAN  
Assistant United States Attorney

JIM F. GILLIGAN  
Assistant United States Attorney

## **EXHIBIT A**

Examination is requested on the following subject matter areas:

1. The identity of persons, and identity and location of documents referenced in the DODIG-2015-011 Report.
2. The identity of persons, and identity and location of documents referenced in the DODIG 2015-081 Report.
3. The identify of persons, and identity of location of documents referenced in the DODIG 2018-035 Report.
4. The identity of persons, and identity and location of documents referenced in the DODIG-2019-030 report.
5. Training or education USAF personnel received concerning fingerprint collection and final disposition submission procedures, including submission to the FBI CJIS, NIBRS, or DIBRS. This topic concerns training or education given to personnel involved in the investigation, court-martial, or confinement of Devin Kelley between July 1, 2011 and December 14, 2012, whether they received the training at the time or some earlier time. This topic includes, but is not limited to: (a) the training or education provided by the Air Force Security Forces Academy at Joint Base San Antonio-Lackland, Texas; (b) the 65-day course at the security Forces Academy covering basic military police functions; (c) formal or informal training; (d) "on-the-job" training or education; (e) recurring or annual training or education; and (f)

training or education provided by the Naval Corrections Academy.

6. Policies, procedures, practices, checklists, and protocols concerning Air Force Security Force's and AFOSI's execution of DoD Instruction 7730.47-M Volume 1. This topic includes, but is not limited to, the monthly submission of information to the DMDC and the DIBRS database for centralization of the collection of information reportable by the DoD Components pursuant to The Brady Handgun Violence Prevention Act of 1993. This topic includes but is not limited to, information concerning I2MS, as noted on pages 8–9 of DODIG-2015-011.
7. Policies, procedures, practices, checklists, and protocols concerning the FBI CJIS NICS database and how other databases such as Next Gen (NGI) (formerly Integrated Automated Fingerprint Identification System (IAFIS)), NCIC, NIBRS, and Uniform Crime Report (UCR) are used to populate it. This topic includes, but is not limited to, the process by which the FBI receives and subsequently uses the information from DIBRS to prevent the purchase of firearms by any person prohibited by one of the eight listed categories.
8. Policies, procedures, practices, checklists, and protocols concerning the Air Force Security Force's and AFOSI's execution of DoD Instruction 5505.11. This topic includes, but is not limited to, the submission of fingerprints and final disposition reports to FBI CJIS by both the Air Force Security Force and AFOSI. This topic includes, but is not limited to, the process by which Devin Kelley's

fingerprints and final disposition report should have been reported to FBI CJIS.

9. Policies, procedures, practices, checklists, and protocols concerning probable cause determinations by a Staff Judge Advocate, especially to include, when a determination should be made, and any training given to guide Judge Advocates on probable cause determinations.
10. Policies, procedures, practices, checklists, and protocols concerning the USAF Corrections System policy for post-trial inmates during in-processing concerning the submission of fingerprints and final disposition reports to the FBI. This topic includes, but is not limited to, the collection of Devin Kelley's fingerprints and submission of his final disposition report by the confinement facility personnel.
11. Policies, procedures, practices, checklists, and protocols put in to place following DODIG-2015-081 pertaining to the AFOSI's NCIC program director to ensure that fingerprints and final disposition reports are submitted to IAFIS (NGI) according to DoD Instruction 5505.11.

## **EXHIBIT B**

Under Fed. R. Civ. P. 34(b)(2), you are commanded to attend and testify at the above specified time and place; you are commanded to produce the below designated documents, electronically stored information, or tangible things in your possession, custody, or control. The following requests do not seek any communication to or from your legal counsel. Please produce a true and correct copy of the following within thirty (30) days of this notice or at the deposition, whichever is sooner. If produced before the deposition date, please produce these documents electronically. If produced at the deposition, please produce a physical copy of the document for examination and marking as a deposition exhibit, as well as an electronic version of the document in its native format.

1. Your current curriculum vitae or resume.
2. Documents you reviewed in preparation for this deposition.
3. Policies, procedures, practices, checklists, or protocols concerning the topics covered in Exhibit A.
4. Reports, notes, logs, letters, communication, or other documents you have authored or have been sent to you concerning this case or the topics covered in Exhibit A.
5. Charts, diagrams, PowerPoints, illustrations, or other demonstrative aids that illustrate the relationships or communication between any of the following: the FBI

CJIS, NICS, NGI, DMDC, NIBRS, DIBRS, IAFIS, or NCIC.

6. Handouts, manuals, course materials, or other documents concerning the training or education of any Air Force employee on fingerprint collection and final disposition submission procedures.



IN THE UNITED STATES DISTRICT FOR  
THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

JOE HOLCOMBE, et. al,	§	NO. 5:18-CV-00555-XR
	§	
Plaintiffs	§	Consolidated with:
	§	5:18-cv-00712-XR ( <i>Vidal</i> )
	§	5:18-cv-00881-XR ( <i>Uhl</i> )
vs.	§	5:18-cv-00944-XR ( <i>Ramsey</i> )
	§	5:18-cv-00949-XR ( <i>McNulty</i> )
UNITED STATES OF	§	5:18-cv-00951-XR ( <i>Wall</i> )
AMERICA,	§	5:18-cv-01151-XR ( <i>Amador</i> )
	§	5:19-cv-00184-XR ( <i>Brown</i> )
Defendant	§	5:19-cv-00289-XR ( <i>Ward</i> )
	§	5:19-cv-00506-XR ( <i>Workman</i> )
	§	5:19-cv-00678-XR ( <i>Colbath</i> )
	§	5:19-cv-00691-XR ( <i>Braden</i> )
	§	5:19-cv-00706-XR ( <i>Lookingbill</i> )
	§	5:19-cv-00714-XR ( <i>Solis</i> )
	§	5:19-cv-00715-XR ( <i>McKenzie</i> )
	§	5:19-cv-00805-XR ( <i>Curnow</i> )
	§	5:19-cv-00806-XR ( <i>Macias</i> )

NOTICE OF DEPOSITION

To: Defendant, United States of America, by and through  
its attorney, Paul Stern, United States Department of  
Justice, Three Constitution Square, 175 N Street,  
N.E., Washington, DC 20002.

From: Plaintiffs, Vidal, et. al, 5:18-cv-712-XR, McNulty, et.  
al, 5:18-cv-00949-XR; Wall, et. al, 5:18-cv-00951-XR;  
Solis, et. al, 5:19-cv-00714-XR, and McKenzie, 5:19-cv-  
00715-XR.

Owen  
1

Please take notice that under Fed. R. Civ. P. 30(b)(6), the above Plaintiffs will take the deposition of the Defendant, United States of America, by oral examination using video, audio, and stenographic means, at the following location and date:

Date: September 12, 2019

Location: United States Attorney's Office  
601 NW Loop 410, Ste. 600  
San Antonio, Texas 78216

Time: 9:00 AM CST

Court Reporter: Res Ipsa or designee

Videographer: Res Ipsa or designee

The deposition will continue from day to day until completed, with such breaks, as necessary. Pursuant to Rule 30(b)(6), the United States of America shall designate one or more officers, directors, managing agents, or other persons who consent and are knowledgeable to testify on the United States' behalf with respect to the subject matters set forth in attached Exhibit A. A request to produce documents permitted under Rule 30(b)(2) is attached as Exhibit B.

### DEFINITIONS

Please see applicable definitions in W.D. Tex. Local Rule CV-26(b)(1)–(7). The singular form of any word shall include within its meaning the plural form of the word and vice versa. For your convenience, Plaintiffs have duplicated those definitions here:

**Communication.** The term “communication” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

**Document.** The term “document” is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a). A draft of a nonidentical copy is a separate document within the meaning of this term.

**Identify (With Respect to Persons).** When referring to a person, to “identify” means to give, to the extent known, the person’s full name, present or last known address, e-mail address, and telephone number, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

**Identify (With Respect to Documents).** When referring to documents, “to identify” means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s), and recipient(s).

**Parties.** The terms “plaintiff” and “defendant” as well as a party’s full or abbreviated name or pronoun referring to a party mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

**Person.** The term “person” is defined as any natural person or business, legal or governmental entity or association.

**Concerning.** The term “concerning” means relating to, referring to, describing, evidencing or constituting.

## ACRONYMS

The following acronyms apply to this notice:

ACRONYM	MEANING
AFOSI	Air Force Office of Special Investigations
CJIS	Criminal Justice Information Services
DIBRS	Defense Incident-Based Reporting System
DMDC	Defense Manpower Data Center
DoD	Department of Defense
DODIG	Department of Defense Inspector General
I2MS	Investigative Information Management System
IAFIS	Integrated Automated Fingerprint Identification System
NCIC	National Crime Information Center
NGI	Next Generation Identification
NIBRS	National Incident-Based Reporting System
NICS	National Instant Criminal Background Check System
USAF	United States Department of Air Force

Respectfully Submitted,

/s/ Jason P. Steed

**Jason P. Steed**

JSteed@kilpatricktownsend.com

Texas Bar No. 24070671

**Kilpatrick Townsend & Stockton  
LLP**

2001 Ross Avenue, Suite 4400

Dallas, TX 75201

Office 214-922-7112

Fax 214-853-5731

Counsel for Vidal, McNulty, and  
Wall

/s/ Jamal K. Alsaffar

**Jamal K. Alsaffar**

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**Tom Jacob**

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**Whitehurst, Harkness, Brees,  
Cheng, Alsaffar & Higginbotham  
& Jacob PLLC**

7500 Rialto Blvd, Bldg. Two, Ste 250  
Austin, TX 78735

Office 512-476-4346

Fax 512-476-4400

Counsel for Vidal, McNulty,  
McKenzie, Solis, Ramirez  
and Wall

## CERTIFICATE OF SERVICE

By our signatures above, we certify that a copy of this pleading, Notice of Deposition, has been sent to the following on August 22, 2019 via email and certified mail, return receipt requested.

JOSEPH H. HUNT  
Assistant Attorney General  
United States Dept. of Justice  
Civil Division

JOHN PANISZCZYN  
Civil Chief  
United States Attorney's Office  
Western District of Texas

JOHN F. BASH  
United States Attorney  
Western District of Texas

JAMES G. TOUHEY, JR.  
Director, Torts Branch  
United States Dept. of Justice  
Civil Division

KIRSTEN WILKERSON  
Assistant Director, Torts Branch  
United States Dept. of Justice  
Civil Division

STEPHEN E. HANDLER  
Senior Trial Counsel, Torts Branch  
United States Dept. of Justice  
Civil Division

PAUL DAVID STERN  
Trial Attorney, Torts Branch  
United States Dept. of Justice  
Civil Division  
CLAYTON R. DIEDRICHS  
Assistant United States Attorney

STEPHEN TERRELL  
Trial Attorney, Torts Branch  
United States Dept. of Justice  
Civil Division  
JAMES E. DINGIVAN  
Assistant United States Attorney

JIM F. GILLIGAN  
Assistant United States Attorney

## **EXHIBIT A**

Examination is requested on the following subject matter areas:

1. The identity of persons, and identity and location of documents referenced in the DODIG-2015-011 Report.
2. The identity of persons, and identity and location of documents referenced in the DODIG 2015-081 Report.
3. The identify of persons, and identity of location of documents referenced in the DODIG 2018-035 Report.
4. The identity of persons, and identity and location of documents referenced in the DODIG-2019-030 report.
5. Training or education USAF personnel received concerning fingerprint collection and final disposition submission procedures, including submission to the FBI CJIS, NIBRS, or DIBRS. This topic concerns training or education given to personnel involved in the investigation, court-martial, or confinement of Devin Kelley between July 1, 2011 and December 14, 2012, whether they received the training at the time or some earlier time. This topic includes, but is not limited to: (a) the training or education provided by the Air Force Security Forces Academy at Joint Base San Antonio-Lackland, Texas; (b) the 65-day course at the security Forces Academy covering basic military police functions; (c) formal or informal training; (d) "on-the-job" training or education; (e) recurring or annual training or education; and (f)



training or education provided by the Naval Corrections Academy.

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1. Your current curriculum vitae or resume.
2. Documents you reviewed in preparation for this deposition.
3. Policies, procedures, practices, checklists, or protocols concerning the topics covered in Exhibit A.
4. Reports, notes, logs, letters, communication, or other documents you have authored or have been sent to you concerning this case or the topics covered in Exhibit A.
5. Charts, diagrams, PowerPoints, illustrations, or other demonstrative aids that illustrate the relationships or communication between any of the following: the FBI

CJIS, NICS, NGI, DMDC, NIBRS, DIBRS, IAFIS, or NCIC.

6. Handouts, manuals, course materials, or other documents concerning the training or education of any Air Force employee on fingerprint collection and final disposition submission procedures.